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In the
Supreme Court of the United States
OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

VERSUS

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELL WOODRUFF AND LEONARD J. WOODRUFF,
Respondents.

PETITION FOR REHEARING.

THOS. W. CHAMPION,
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MAY, 1946.

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INDEX

PAGE

I. The judgment of this Court overlooks important issues and matters of proof of a decisive nature 2

Authority:—

Opinion of this Court, L. ed. Adv. Ops., Vol. 90, No. 13, Pages 828-838 3

II. The judgment of this Court that this vital issue was adjudicated against Trustee and that such adjudication is binding here is erroneous 6

Authority:—

Opinion of this Court, Page 834 6

34 Corpus Juris 55 6

The judgment of this Court is contrary to the rule of Russell v. Place et al., 94 U. S. 606; DeSollar v. Hauseombe, 158 U. S. 216 8

Authority:—

Opinion of this Court, Page 832 9

Russell v. Place, et al., 94 U. S. 606 9

34 Corpus Juris 1518(b), Page 1074 9

The rule in Cromwell v. Sac County, 94 U. S. 352; Grubb v. Public Utilities Commission, 281 U. S. 479; Chicot County Drainage District v. Baxter State Bank, 308 U. S. 375 11

Authority:—

Opinion of this Court, Page 834 11

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 375 12

Cromwell v. Sac County, 24 L. ed. Page 198 11

Grubb v. Public Utilities Comm., 281 U. S. 479 12

PAGE

The Rule in Pepper v. Litton, 308 U. S. 306 12

Authority:—

Opinion of this Court, Page 835 13

Boynton v. Ball, 121 U. S. 457 16

Chandler v. Thompson 15

In re Continental Engine Co. 15

In re Thompson 15

Pepper v. Litton, 308 U. S. 306 ..... 13, 14, 16

The hearing on values before the California District Court 16

Authority:—

Opinion of this Court, Page 833 16

The power of the Bankruptcy Court to subordinate claims 17

Authority:—

Golden State Bankruptcy case 18

Conclusion 19

Authority:—

Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U. S. 238 20

Certificate of Counsel 23

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Respondents.

PETITION FOR REHEARING

This petition for rehearing is filed pursuant to permission granted by Rule 33 of the Rules of this Court. On May 16, 1946, an order was entered herein by Mr. Justice Rutledge extending the time for filing to and including May 25, 1946.

Respondents respectfully ask that they be granted a rehearing herein; that the judgment entered herein on April 22, 1946, be set aside, the judgment of the Circuit Court of Appeals for the Tenth Circuit affirmed and the cause remanded to the District Court for findings of fact in accordance therewith. In support of and as grounds for such petition for rehearing, respondents say:

I.

THE JUDGMENT OF THIS COURT OVERLOOKS IMPORTANT ISSUES AND MATTERS OF PROOF OF A DECISIVE NATURE

Respondents most respectfully submit and contend that the record discloses the Referee disallowed petitioner's claim because they proved by competent, convincing and undisputed documentary and oral evidence that petitioner was never possessed of the commercial stones the alleged value of which forms more than four-fifths of his total judgment. Respectfully, but frankly, respondents feel the Court has entirely overlooked this most important fact—the basis of their attack upon the claim before the Referee and the issue and proof upon which the Referee disallowed the claim.

If petitioner never owned and never possessed the greater part of the property he alleged was converted and which forms the major part of his judgment, then such property could not have been converted and he could not have been damaged by bankrupt and could not have sustained the claimed loss and was not and is not entitled to a judgment therefor nor to collect thereon.

In the judgment we find this Court's concept of the issues in the following excerpts (For convenience our references will be to the judgment reported in L. ed. Adv. Ops., Vol. 90, No. 13, Pages 828-838):

(P. 829) "Respondents objected to allowance of the claim on the ground that, so far as relevant, the judgment was procured by fraud, that is, *by perjured testimony as to the value of the property alleged to have been converted* by the defendant (Italics ours).

(P. 831) "* * * that petitioner's testimony, particularly as to the value of the converted property, was perjured. * * *

(P. 833) "* * * procured a default judgment against the bankrupt for an amount in excess of their value.

(P. 823) "In his application to the bankruptcy court * * * the bankrupt had represented that * * * 'the raw gems described * * * were at no time of the value of $164,000 or any comparable value.'

(P. 833) "As already noted the papers on the motion in behalf of the trustee * * * set up that the judgment was based on '*petitions values*' (Italics ours).

(P. 833; Headnote 7) "Examination of the record * * * makes plain the nature of the fraud charged against petitioner. Shortly stated it is that in the course of transactions with petitioner the bankrupt acquired possession of and converted to his own use a quantity of worthless minerals, owned or previously owned or possessed by petitioner, who, by means of perjured allegations in the complaint and perjured testimony as to their amount and value, procured a default judgment against the bankrupt for an amount in excess of their value."

A claim of "fictitious values" as to allegedly converted property proceeds upon a different premise from a claim that petitioner never owned the semi-precious gems described in his complaint, was never possessed of them and never lost them. If, as respondents seriously contend, these facts were conclusively established before the Referee, then the judgment of this Court permits petitioner to profit by a diabolical fraud at the expense of the other creditors of the bankrupt estate.

The proof of his non-ownership, non-possession and non-loss of this property was made in various ways. As a basis respondents took petitioner's testimony given on three other occasions in which he testified that he owned these gems in Australia prior to the Panama-Pacific Exposition; loaned them to the Queensland Government for exhibition at the Exposition; was sent here by that Government as its representative; attended the Exposition as such; after it closed, moved his gems to San Francisco and stored them in the Wells Fargo Nevada Bank from 1915 to 1928, when they were removed and shipped to Los Angeles (see Respondents' Brief, Page 41). Then the testimony referred to on Pages 41 to 43 of respondents' brief, not repeated for the sake of brevity, showing he had no such connections, no such gems, no such property. Then the various discrepancies in volume, quantity, weight, pointed out on Pages 44-46 of brief, again not repeated for brevity's sake. This proof not for the purpose of showing fictitious values but for the purpose of showing lack of credibility, lack of stability, for the support

of the claim of non-ownership and non-possession, lack of reliability in such claim.

The evidence of John Greble Moran (Brief, Page 37) in support of proposition that if petitioner had been possessed of claimed property he would not have been guilty of such conduct.

The letter at Page 933 of the record to show that if he had had this valuable property in storage at San Francisco at that time he probably would not have been trying to borrow money to get his mines running to produce like materials to fill an unsatisfied market demand.

The evidence with reference to the need for this type of material from 1914 to 1918, when it was a scarce item, badly needed by petitioner's native country and the country in which he was living.

There is a large volume of other evidence, direct and circumstantial, sufficient to convince the Referee that this claim should not be allowed. No doubt this Court did not and does not have time to review this evidence. No doubt the Circuit Court of Appeals found itself similarly situated. The District Court can make findings of fact thereon and then the full matter can be reviewed.

II.

THE JUDGMENT OF THIS COURT THAT THIS VITAL ISSUE WAS ADJUDICATED AGAINST TRUSTEE AND THAT SUCH ADJUDICATION IS BINDING HERE IS ERRONEOUS

(P. 834; Headnote 9) "But here the alleged fraud was put in issue and the issue was decided against the trustee, for failure of proof."

This can only have reference to the statement in the trustee's notice of motion to intervene, etc. (R., Vol. 1, Page 275) that the motion will be made "upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." This is the ground of fraud to which the Circuit Court of Appeals for the Ninth Circuit apparently had reference in its statement that fraud was alleged, not proved, and apparently abandoned. The effect of this Court's judgment, as respondents read it, is that because the trustee made this allegation in his notice of motion, and because the Circuit Court found that it was not proved and apparently abandoned, the creditors of the bankrupt were subsequently precluded under the doctrine of *res judicata* from raising, in objection to the claim based upon the judgment, the charge that petitioner did not own, was not possessed and could not have lost the property for which he obtained the major part of his judgment.

The entry of a judgment is a ministerial act; 34 Corpus Juris 55. The claim of fraud in connection with the entry of the judgment is probably indefinite and uncertain. Respond-

ents urge it is not sufficient to embrace the objections to the claim which the Referee sustained, even if they are to be precluded by the harsh doctrine that they are now estopped to prove their case as to matters urged by the trustee in his notice of motion to vacate but which were not heard nor decided upon their merits. But, let us assume that in support of this statement in his notice the trustee had submitted proof of non-ownership, non-possession and non-loss of this property and based thereon the Court had vacated the judgment, would the petitioner herein then be bound and precluded by such finding from contesting the issue upon the trial of the case? Would the order vacating the judgment have settled all the issues and the trustee then *ipso facto*, have been entitled to a judgment in his behalf? The trustee further stated in his notice that the motion would be made upon the further ground that the trustee had a good defense to the action but was prevented from presenting it by fraud, etc. (R., Vol. 1, Page 277). As respects this phase of the case, the Circuit Court of Appeals, Ninth Circuit, held that trustee couldn't have had a defense to the action because he wasn't a party to it. It would seem from this statement that the Circuit Court did not regard the trustee as a party to the litigation before it and, with respect to the charge of fraud alleged, not proved and abandoned, the Circuit Court may have had reference to the matters urged by the bankrupt.

But, in any event, the facts remain that the basic charge of respondents was not presented to, was not heard by, and

was not adjudicated by the California courts. And respondents respectfully submit that such matters could not have been presented to and decided by the California District Court on the trustee's motion to vacate and even if it had been so presented and decided, and the judgment vacated on such proof, as stated, such adjudication would not have been on the merits and would not have precluded either party from further litigation of this vital point. And it is earnestly submitted that even though this issue should be held to have been included in the statement of "fraud in the entry of the judgment," still, such fact can not operate to estop and bar these respondents from attacking the judgment on its merits before the Referee on the stated grounds and upon the grounds for which Referee disallowed the claim.

THE JUDGMENT OF THIS COURT IS CONTRARY TO THE RULE OF RUSSELL V. PLACE ET AL., 94 U.S. 606; DeSOLLAR V. HAUSEOMBE, 158 U.S. 216

The gist of the holdings in these cases and others following them is that "it is the essence of estoppel by judgment that it is certain that the precise fact was determined by the former judgment" and "to determine the effect of a former judgment pleaded as estoppel, two questions must be answered: (1) was the former judgment rendered on the same cause of action? (2) If not, was some matter litigated in the former suit determinative of a matter in controversy in the second suit?"

To answer these questions the Court will look to the pleadings, the issues, documents, stenographic reports or minutes of testimony, the evidence submitted, the respective contentions of the parties, the rulings and findings of the Court, etc.; 34 Corpus Juris 1518 (b), Page 1074.

> "To apply the judgment, and give effect to the adjudication actually made, when the record leaves the matter in doubt, such evidence is admissible."
>
> *Russell* v. *Place*, *supra*.

In order to show just what matters were presented to the California courts in the proceedings out there, the respondents, notwithstanding the burden was not theirs, brought before the Referee all the documentary evidence available to show just what transpired on the hearing of bankrupt's first motion to vacate, the hearing on values in June, 1939, and on the trustee's and bankrupt's motion for permission to intervene, etc. These matters are referred with citations at Pages 21 to 23 of respondents' brief. They show, respondents most respectfully submit, that the "precise fact" was not presented to, was not heard by, and was not decided by the California courts in any of the proceedings out there—the "precise fact" being the non-ownership, non-possession and non-loss of the semi-precious gems claimed by petitioner.

Headnote 2, Page 832, this Court recognized the rule that the bankruptcy court "may exercise equity powers to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud has not been previously adjudicated" and observes with reference to the principle of *res*

judicata that it applies in bankruptcy "when one appears in court to present his case, is *fully heard*, and the contested issue *is decided* against him." But this case doesn't fit this law. The issue was not made, was not heard, was not decided. The Referee is the only court that has heard this evidence and passed on the merits of the claim of non-ownership, non-possession and non-loss. In no other court was the issue joined, the evidence heard, the issue decided. Consequently, the rule which has application here is the first quotation in this paragraph from the judgment of this Court. The bankruptcy court does have jurisdiction and power to inquire into a fraudulent judgment where the issue of fraud has not been previously adjudicated. And in this case, the issue would have had to have been decided against the trustee, on its merits, admitting he represented the creditors, to be binding upon them.

And respondents cry out in their distress, that this record can be searched from end to end and it will not be found that this issue was raised, heard and decided prior to bankruptcy but on the contrary the record shows that it was not raised, heard nor decided by any of the California courts. Even if it be held to have been included in the trustee's statement, "fraud in the entry of the judgment," it was not heard and was not decided in that proceeding.

THE RULE IN CROMWELL V. SAC COUNTY, 94 U.S. 352; GRUBB V. PUBLIC UTILITIES COMMISSION, 281 U.S. 479; CHICOT COUNTY DRAINAGE DISTRICT V. BAXTER STATE BANK, 308 U.S. 375

Headnote 9, Page 834. Quoting:

"But here the alleged fraud was put in issue and the issue was decided against the trustee, the bankrupt and those whom they represent or who claim under them, for failure of proof. After two proceedings, in one of which the bankrupt and in the other of which the bankrupt and his trustee, sought, and were free, to prove that the judgment was based on *fraudulently alleged, fictitious values*, and in both of which the decision was against them, the principles of *res judicata* preclude the revival of the litigation in the bankruptcy court" (Italics ours).

Cromwell v. *Sac County* says:

"In former case, the judgment, if rendered *upon the merits*, constitutes an absolute bar to a subsequent action" (Italics ours).

It is not contended that any judgment on the merits of any charge of fraud was ever made by any of the California courts. The nearest approach to any such adjudication was that by the Circuit Court of Appeals of the Ninth Circuit wherein it said that the issue of fraud in the entry of the judgment was raised by the trustee, not proved and apparently abandoned. An abandonment of an issue can not be held to be an adjudication of that issue upon its merits. We quote from *Cromwell* v. *Sac County*, 24 L. ed. at Page 198:

"In commenting upon a decision cited in that case, Lord Ellenborough, in his elaborate opinion, said: 'It is not the recovery, but the matter alleged by the party, and upon which the recovery proceeds, which creates the

estoppel. The recovery of itself in an action of trespass is only a bar to the future recovery of damages for the same injury; but the estoppel precludes parties and privies from contending to the contrary of that point or matter of fact, which, having been once distinctly put in issue by them, or by those to whom they are privy in estate or law, has been, on such issue joined, solemnly found against them."

And the Court denies the application of the doctrine for which this case is cited as authority.

In *Chicot County Drainage Dist.* v. *Baxter State Bank*, a full hearing was had upon the issues raised, evidence heard and judgment rendered upon the merits of the controversy. Likewise in *Grubb* v. *Public Utilities Commission*, where the Court pointed out that the rule only obtains where there is an adjudication upon the merits of the first controversy.

THE RULE IN PEPPER V. LITTON, 308 U.S. 306

As we understand this case the trustee objected to the allowance of the claim upon the ground that the book entries showing an indebtedness by the corporation to the judgment creditor were false; that such corporation was not indebted to the judgment creditor for the claimed amount and the judgment was obtained by perjured testimony and did not represent a real debt. For these reasons the Court said the bankruptcy court could inquire into the claim, go behind the judgment to ascertain if it was obtained by fraud and perjury and not founded on a real debt and that the fact that the trustee instituted an action in the state district court to set

aside the judgment, lost there, appealed to the Supreme Court of the state and lost there, did not constitute *res judicata* of the jurisdiction of the bankruptcy court because this issue was not raised in the state court. Likewise here, except that the prior proceedings here were in the Federal courts instead of the state court. On this phase of the matter we can not distinguish *Pepper* v. *Litton* and the cases upon which it is based.

Headnote 12, Page 835, referring to *Pepper* v. *Litton*, this Court said:

> "It was thus made plain that the theory relied upon as requiring disallowance or subordination of the contested claim rested upon grounds not previously adjudicated, and we explicitly noted that the state court did not adjudicate it."

Respondents respectfully submit that the same situation exists here. The question of non-ownership, non-possession and non-loss of the commercial gems was not raised in any of the Federal court proceedings prior to bankruptcy and was not adjudicated in any of those proceedings. And respondents earnestly submit that *Pepper* v. *Litton* is authority for the position that if such issues were not submitted to, not heard and not decided by the Federal courts in California, then the bankruptcy court in Oklahoma was not inhibited from inquiring into this phase of the matter and finding the facts with reference thereto. The Referee did this and the Circuit Court of Appeals remanded the case to the District Court for the same purpose. For findings of fact upon this vital issue in the case!

Pepper v. *Litton*, and the cases upon which it is based, is authority for the rule that the bankruptcy court, in the allowance or disallowance of claims invokes equitable powers "to the end that fraud will not prevail, that substance will not give way to form, that technical consideration will not prevent substantial justice from being done." But, here, most respectfully and sincerely respondents say that technical considerations are being used to permit this very thing, to permit fraud to prevail, to prevent substantial justice from being done. All in the name of a technical doctrine, the doctrine of *res judicata*. And here the application of the technical doctrine of *res judicata* is applied to the extent of saying that because the trustee stated in his notice of motion for permission to intervene in the California court, that the motion would be made upon the ground of "fraud in the entry of the judgment," which ground the Circuit Court of Appeals stated was not proved but apparently abandoned, the creditors of the bankrupt are now barred and estopped from asserting that the petitioner obtained his judgment by perjury, viz: that he claimed ownership of property and recovered judgment for the conversion of property he never owned, never possessed and never lost.

In *Pepper* v. *Litton*, the Court said:

> "And the bankruptcy trustee may collaterally attack a judgment offered as a claim against the estate for the purpose of showing that it was obtained by collusion of the parties *or is founded upon no real debt*." (Italics ours). Citing *Chandler* v. *Thompson* (C.C.A. 7th), 120 Fed. 940 and other cases in Note 13, 84 L. ed. at 289.

In *Chandler* v. *Thompson*, the Court said:

"* * * A judgment not founded on an actual debt or other legal liability, due or enforceable at the time of its entry, will not be upheld against creditors of the judgment debtor. *Palmer* v. *Muchmell*, 43 N. J. Eq. 90, 10 Atl. 802."

In re Continental Enquiry Co.:

"(2) The claim was founded on a judgment rendered by default in the state court. The reduction of an alleged debt to judgment in a state court before bankruptcy does not exempt it from attack by or on behalf of creditors who would be injuriously affected by its allowance, when such allowance is sought in bankruptcy proceedings."

In re Thompson:

"What are the rights of creditors in a court of equity against another creditor, whose claim is tainted by fraud, actual or constructive, which judgment has been obtained thereon in a court of law?"

and the Court holds the judgment subject to attack "which fraudulently obtained."

It is most respectfully submitted that the distinguishing of *Pepper* v. *Litton* from the case at bar and the rule laid down in this case, as we understand it, that the rule of *Pepper* v. *Litton* only applies where a fiduciary relationship exists between the judgment creditor and debtor, will result in untold confusion in the administration of the Bankruptcy Act. Respondents respectfully urge that the cases cited on Page 14 of their brief all are authority for the rule herein contended for, the right and power of the bankruptcy court to inquire into a judgment underlying a claim in bankruptcy

for the purpose of determining whether the claim is meritorious and founded on a real debt.

> "A bankruptcy court has full power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. And the mere fact that a claim has been reduced to judgment does not prevent such an inquiry. As the merger of the claim into a judgment does not change its nature so far as provability is concerned."
>
> *Pepper* v. *Litton*, citing *Boynton* v. *Ball*, 121 U.S. 457.

THE HEARING ON VALUES BEFORE THE CALIFORNIA DISTRICT COURT

This hearing took place before bankruptcy. Whatever transpired could not be binding upon respondents because they were not parties to that proceeding.

Headnote 7, Page 833, the Court says:

> "It is evident that an essential element of the claim of fraud is that the alleged converted minerals were worth substantially less than the $164,000 alleged to be their value in the complaint, for which the judgment was rendered. But before the bankruptcy this issue of value had been litigated between petitioner and the bankrupt in the District Court for Southern California."

This premise again overlooks the essential nature of the grounds upon which the Referee disallowed the claim, non-ownership, non-possession, non-loss, but let us look at the nature of this hearing for a moment. The order of June 9, 1939, on bankrupt's motion to set aside the default, before bankruptcy, provides:

> "Such hearing to be limited to ascertaining by the Judge of said court, from such evidence to be presented

by the said parties under the rules of evidence of said court, the sum or amount of damage that may represent the value of the said property of plaintiff for which damages were allowed as alleged in said complaint" (R., Vol. 1, Page 265).

This hearing proceeded upon this premise and assumed the ownership, possession and loss of the property described in the complaint. The only issue heard by the court was whether or not such property was worth the amount of the judgment. Samples of similar materials were brought into court. There was testimony that these materials were of a value consistent with those alleged in the complaint. Upon this basis, assuming the ownership, possession and loss of the property, the court let the judgment stand (R., Vol 2, Pages 1163-1164). There was no inquiry into the merits of the controversy as to ownership, possession and loss; that was precluded by the order of the court.

THE POWER OF THE BANKRUPTCY COURT TO SUBORDINATE CLAIMS

The power of the Bankruptcy Court to subordinate claims of a class so as to equitably distribute the assets of the estate, is complete. Here, assuming the legitimacy of petitioner's cause of action for damages, the judgment includes more than $113,000 interest, allowed from the date of the alleged conversion in 1929 to the date of judgment in 1939. The record shows that the first claim of petitioner of loss in connection with this transaction was his claim for

$30,000 filed in the *Golden State Bankruptcy case* in California in February, 1930. This claim was not heard until May, 1932, when it was disallowed. Shortly thereafter, petitioner filed his first case against bankrupt, June, 1932. This case was dismissed for want of prosecution in July, 1935. The second suit in which the judgment was rendered was filed shortly thereafter but summons was not served on bankrupt until January, 1939, nearly four years later. Thus a period of nearly ten years elapsed from the time of the alleged conversion until date of judgment. The record bespeaks laches and neglect on the part of petitioner in prosecuting his claim. The allowance of interest from the date of this judgment is open to serious question. But even if properly allowed, is the hand of the Bankruptcy Court tied by the judgment to grant relief to other creditors of the same class from the allowance of interest, by subordination, especially in view of petitioner's neglect and laches in the prosecution of his claim? Assuming that some of creditors' claims originated during this ten-year period; that they were for money loaned in good faith or other evidences of unquestioned debt—some unchallenged. Are they to be denied in part by petitioner's participation on an equal basis with them in the assets of this estate when petitioner comes with unclean hands and they come with clean hands? These considerations are in addition to the main consideration that the bankruptcy court found petitioner's claim was not founded upon merit and did not represent a real debt.

Since the Referee disallowed the claim in full he obviously did not consider the question of subordination. Is he now precluded from doing so? Respondents respectfully submit that the Bankruptcy Court should be permitted to review the evidence herein against petitioner's claim for the purpose of considering whether or not it should be subordinated to the claims of other like creditors, if for no other purpose, and that the following language in the concluding paragraph of the opinion should be modified so as to permit this to be done: "There is no equitable ground upon which his claim or the judgment upon it could be set aside or *subordinated* to those of other creditors," etc. (Italics ours).

CONCLUSION

Respondents most respectfully submit this petition for rehearing. They are willing that this case be sent back to the District Court for findings of fact upon all matters the Court deems material to enable it to properly dispose of this controversy. If this Court is of the opinion that petitioner should be given an opportunity to introduce evidence before the District Court or Referee in opposition to respondents' evidence and claim, respondents have no objections. They want no technical advantage by reason of the fact that petitioner has stood upon his objections to the jurisdiction of the bankruptcy court to hear respondents; they are willing for him to have his full day in court. Under the judgment of this Court, as it now stands, respondents humbly say that

petitioner is permitted to realize upon a judgment obtained by perjured testimony, which is without merit, does not represent a real debt and is unconscionable.

In *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U. S. 238, this Court said:

> "Out of deference to the deep-rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. * * * But where the occasion has demanded, where enforcement of the judgment is 'manifestly unconscionable' * * * they have wielded the power without hesitation. * * * whatever the form the relief has taken in particular cases, the net result in every case has been the same; where the situation has required the court has, in some manner, devitalized the judgment. * * *
>
> "* * * this equitable procedure has always been characterized by flexibility which enables it to meet new situations * * * and to accord all the relief necessary to correct the particular injustices involved in these situations."

Respondents pray the exercise of this power in this case by this Court, if such be necessary, to the end that "fraud will not prevail, that substance will not give way to form, that technical consideration will not prevent substantial justice from being done."

Respondents further say that the question of subordination was not considered nor decided by the Bankruptcy Court and that even if the judgment of the Circuit Court of Appeals herein is reversed this cause should be left open for consideration by the Bankruptcy Court of the question of subordination. In order that there may be no question about

the right of the Bankruptcy Court to do this, respondents ask that the last paragraph of the judgment of this Court be corrected so as to eliminate therefrom any reference to the question of subordination and particularly the following language: "or subordinated to those of other creditors in the bankruptcy proceedings."

Respectfully submitted,

THOS. W. CHAMPION,
LOUIS A. FISCHL,
H. A. LEDBETTER,
Ardmore, Oklahoma;
Counsel for Respondents.

MAY, 1946.

CERTIFICATE OF COUNSEL

Counsel for respondents most respectfully submit that this Petition for Rehearing is filed in good faith and not for delay.

LOUIS A. FISCHL,
Of Counsel for Respondents.

May 20, 1946.

SUPREME COURT OF THE UNITED STATES.

No. 496.—October Term, 1945.

M. E. Heiser, Petitioner,
vs.
Willie Mae Woodruff, Howard L. Woodruff, Marguerite B. Woodruff, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 22, 1946.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is a proceeding in bankruptcy on objections to the allowance of petitioner's claim in bankruptcy based upon a money judgment acquired against the bankrupt before the bankruptcy. Respondents objected to allowance of the claim on the ground that, so far as here relevant, the judgment was procured by fraud, that is, by perjured allegations in the complaint in the suit in which the judgment was rendered, and by perjured testimony as to the value of property alleged to have been converted by the defendant.

The referee in bankruptcy disallowed the claim. On the referee's certificate the district court, sitting in bankruptcy, allowed the claim, sustaining petitioner's contention that the issue of fraud in procurement of the judgment had been previously litigated and decided in petitioner's favor in proceedings in which the petitioner and the bankrupt or his trustee, or both, had been parties, and was therefore *res judicata*.

The Court of Appeals for the Tenth Circuit reversed. 150 F. 2d 869. Relying upon our decisions in *Pepper* v. *Litton*, 308 U. S. 295, and *Prudence Realization Corp.* v. *Geist*, 316 U. S. 89, it held that the court of bankruptcy could go behind the prior adjudications of the validity of the judgment and decide for itself the questio s previously litigated and decided, whether the cause of action on which the judgment was entered was meritorious, and whether the claim in bankruptcy should be rejected because based on a judgment procured by claimant's fraud. The Court of Appeals accordingly remanded the cause to the district court for further proceedings on the objections to allowance of the claim. We granted certiorari, —— U. S. ——, upon a petition which raises the questions whether the bankruptcy court may re-adjudi-

cate the merits of a cause of action on which a judgment against the bankrupt, proved as a claim in bankruptcy, was entered and may disregard a previous adjudication between the parties that the judgment was not procured by fraud.

Woodruff, the bankrupt, was adjudicated as such on his voluntary petition on July 5, 1939. Petitioner, proceeding under § 63(a)(1) of the Bankruptcy Act, 11 U. S. C. 103(a), which provides that a fixed liability, evidenced by a judgment, is a provable claim in bankruptcy, filed his proof of claim in the bankruptcy court upon a default judgment against Woodruff for the sum, including accrued interest and costs, of more than $278,000. The suit in which the judgment was procured was filed in the United States District Court for the Southern District of California in July, 1935. Judgment was entered for petitioner on March 20, 1939, on proof taken of service of summons on January 31, 1939, and of Woodward's default and on evidence given by the petitioner.

The suit was based on diversity of citizenship, and the cause of action alleged was in substance that Woodruff had procured property of petitioner, consisting of rough sapphires, opals and zircons, of a stated value of $164,000, by false pretenses and false representations, the details of which are not now material, and had thereafter converted them to his own use.

On March 29, 1939, shortly after the judgment was rendered, Woodruff filed a motion in the trial court to set it aside. The motion, so far as it was based upon the alleged failure to serve the defendant Woodruff with process, was denied on June 8, 1939. But the court, on stipulation of the parties, directed that a hearing be held to determine the value of the converted gems and provided that at the hearing "such competent evidence as either party desires to present be received" and considered by the court "in determining the actual value of the property" which the plaintiff alleged was converted by defendants. The Court's order further provided that the judgment should be reduced in the amount by which the adjudged value of the gems exceeded the actual value as found at the hearing. After a contested hearing at which evidence, oral and documentary, was received, the trial court made a minute order stating that the court found that the values of the converted property were those alleged in the complaint, and declined to give further consideration to the motion to set aside the judgment. No appeal was taken from the judg-

ment, and no review was had of the minute order or of the denial of the motion to set the judgment aside.

On August 23, 1939, on application of Jackson, the trustee of the bankrupt's estate, which certain creditors supported, the referee in bankruptcy authorized and directed the trustee "to take such legal steps as may be proper and necessary under the law to vacate, set aside, and to avoid" the judgment, and authorized him to retain counsel in the Southern District of California for that purpose. This was followed by a motion on behalf of the bankrupt's trustee, and the bankrupt, in the district court for that district, to set aside the judgment on the grounds, among others, that no proper service of process had been made on the defendant, that the complaint did not state a cause of action, that "a fraud was practiced upon the above entitled court with respect to the entry of said judgment", and that the trustee and the bankrupt "have been prevented from presenting said defense upon any trial of the merits by reason of fraud, accident, surprise and excusable neglect as is more particularly shown by the affidavits" upon which the motion was made. The affidavit of the trustee in support of the motion stated that the judgment was "based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors and your affiant, as representative of said creditors". Counter affidavits by petitioner and his attorney in the suit in which the judgment was rendered denied the allegations of fraud.

The district court denied the motion, and the Court of Appeals for the Ninth Circuit affirmed. 111 F. 2d 310. It overruled all the alleged grounds for setting aside the judgment, holding that the service of process was valid and that in any case the defendant had appeared in the suit by entering into the stipulation for trial of the issue of value of the property alleged to have been converted, and participating in the hearing on that issue. It also held that the charge of fraud was denied and unsupported by proof, adding "that ground of appellants' motion appears to have been abandoned." There was no review of this decision.

The court below, in rejecting petitioner's plea of *res judicata*, and in directing inquiry into the merits of the original cause of action and into the allegation of fraud in procurement of the judgment, rested its decision upon the ground that the bankrupt's trustee had failed to place before the California district court any contention or proof that petitioner's testimony, particularly as to the value of the converted property, was perjured, that the

bankrupt was not indebted to petitioner, or that the allegations of the complaint were untrue. The court, relying on *Pepper* v. *Litton, supra,* also held that the bankruptcy court, being a court having equity powers, was not bound by the principles of *res judicata* as to issues which were not pressed before the California district court, and that the authority of the bankruptcy court as a court of equity included the power to inquire into the validity of the claim upon which the judgment, presented as a claim against the estate, was based.

We need not consider whether, apart from the requirements of the full faith and credit clause of the Constitution, the rule of *res judicata* applied in the federal courts, in diversity of citizenship cases, under the doctrine of *Erie* v. *Tompkins,* 304 U. S. 64; cf. *Guaranty Trust Co.* v. *York,* 326 U. S. 99; *Holmberg et al.* v. *Armbrecht,* No. 505, decided February 25, 1946, can be other than that of the state in which the federal court sits. For nothing decided in *Erie* v. *Tompkins, supra,* requires a court of bankruptcy, in applying the statutes of the United States governing the liquidation of bankrupts' estates, to adopt local rules of law in determining what claims are provable, or to be allowed, or how the bankrupt's estate is to be distributed among claimants. Cf. *Board of Comm'rs* v. *United States,* 308 U. S. 343; *Deitrick* v. *Greaney,* 309 U. S. 190; *D'Oench, Duhme & Co.* v. *F. D. I. C.,* 315 U. S. 447; *Helvering* v. *Stuart,* 317 U. S. 154, 161-2; *Sola Electric Co.* v. *Jefferson Co.,* 317 U. S. 173, 176; *Wragg* v. *Federal Land Bank,* 317 U. S. 325, 328; *Clearfield Trust Co.* v. *United States,* 318 U. S. 363. In passing upon and rejecting or allowing the proof of claim in this case the court of bankruptcy proceeds—not without appropriate regard for rights acquired under state law—under federal statutes which govern the proof and allowance of claims based on judgments. In determining what judgments are provable and what objections may be made to their proof, and in determining the extent to which the inequitable conduct of a claimant in acquiring or asserting his claim in bankruptcy, requires its rejection or its subordination to other claims which, in other respects are of the same class, the bankruptcy court is defining and applying federal, not state, law. See *Prudence Realization Corp.* v. *Geist, supra,* 95, 96 and cases cited; cf. *United States* v. *Pelzer,* 312 U. S. 399, 402-03.

It is true that a bankruptcy court is also a court of equity. *Local Loan Co.* v. *Hunt,* 292 U. S. 234, 240, and may exercise equity powers in bankrupty proceedings to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud

has not been previously adjudicated. *Pepper* v. *Litton*, *supra*, 306. In appropriate cases, acting upon equitable principles, it may also subordinate the claim of one creditor to those of others in order to prevent the consummation of a course of conduct by the claimant which, as to them, would be fraudulent or otherwise inequitable. *Taylor* v. *Standard Gas Co.*, 306 U. S. 307; *Pepper* v. *Litton*, *supra*; *Prudence Realization Corp.* v. *Geist*, *supra*; *American Surety Co.* v. *Sampsell*, No. 142, this term. But we are aware of no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of *res judicata*, which is founded upon the generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and the contested issue is decided against him, he may not later renew the litigation in another court. *Baldwin* v. *Traveling Men's Ass'n*, 283 U. S. 522, 525-6.

Before *Erie* v. *Tompkins* it was recognized by this Court that, apart from the full faith and credit clause, a judgment duly rendered in one court will be recognized as *res judicata* in a suit between the same parties in a federal court. *Cromwell* v. *County of Sac*, 94 U. S. 351; *Case* v. *Beauregard*, 101 U. S. 688; *Baltimore S. S. Co.* v. *Phillips*, 274 U. S. 316; *Grubb* v. *Public Utilities Comm'n*, 281 U. S. 470. See *Baldwin* v. *Traveling Men's Ass'n*, *supra*, and cases cited; cf. *Chicago, R. I. & P. Ry.* v. *Schendel*, 270 U. S. 611; *Milwaukee* v. *White*, 296 U. S. 268, 272-3. It has been held in non-diversity cases, since *Erie* v. *Tompkins*, that the federal courts will apply their own rule of *res judicata*. *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 403; *Jackson* v. *Irving Trust Co.*, 311 U. S. 494, 503. This Court has also required that effect be given in both state and federal courts to a plea of *res judicata* arising from decrees of a bankruptcy court. *Stoll* v. *Gottlieb*, 305 U. S. 165; *Chicot County Dist.* v. *Bank*, 308 U. S. 371. And it is well settled that where the trustee in bankruptcy unsuccessfully litigates an issue outside the bankruptcy court the decision against him is binding in the bankruptcy court. *Davis* v. *Friedlander*, 104 U. S. 570; *Fischer* v. *Pauline Oil Co.*, 309 U. S. 294, 302-03. At least to the extent that the issue of fraud raised by the objections to petitioner's claim as between petitioner and the bankrupt has been litigated and decided before the bankruptcy and has since been litigated between the petitioner and the trustee in bankruptcy, who represents the bankrupt and his creditors, that issue is now *res judicata* and may not further be litigated in the bankruptcy proceeding. Hence we turn to the question, what issues

essential to the allegations that the judgment was procured by fraud have been so litigated.

Examination of the record in this proceeding, including the objections filed to petitioner's claim, the applications of the bankrupt, the trustee, and the creditors, for authority to attack the judgment in the district court of Southern California, and the proceedings instituted in that court for that purpose, make plain the nature of the fraud charged against petitioner. Shortly stated it is that in the course of transactions with petitioner the bankrupt acquired possession of and converted to his own use a quantity of worthless minerals, owned or previously owned or possessed by petitioner, who, by means of perjured allegations in the complaint and perjured testimony as to their amount and value, procured a default judgment against the bankrupt for an amount in excess of their value.

It is evident that an essential element of the claim of fraud is that the alleged converted minerals were worth substantially less than the $164,000 alleged to be their value in the complaint, for which the judgment was rendered. But before the bankruptcy this issue of value had been litigated between petitioner and the bankrupt in the District Court for Southern California. In the course of the proceedings had on the bankrupt's motion to set aside the judgment, the district court decided the issue against the bankrupt and declined to disturb the judgment. No appeal was taken from the judgment and consequently there was no review of the denial of the bankrupt's motion to set aside or modify the judgment, or of the court's minute order finding that the converted gems were of the value alleged in the complaint.

The same issue as to value and also the issue whether there was perjured testimony of value were raised in the proceeding later brought in the district court for Southern California by the trustee in behalf of the bankrupt to set aside the judgment. In his application to the bankruptcy court to direct the trustee to bring the proceeding, the bankrupt had represented that "the material allegations of the complaint filed in said case [in the District Court for Southern California] are untrue"; that "the raw gems described in the plaintiff's complaint were at no time of the value of $164,000 or any comparable value." As already noted the papers on the motion in behalf of the trustee and the bankrupt to vacate the judgment, set up that the judgment was based on "fictitious values" and was fraudulently procured. In

that proceeding the charge of fraud thus alleged was put in issue by the answering affidavits. The denial of the motion by the district court was affirmed by the Court of Appeals for the Ninth Circuit on the ground that the applicants had not sustained their allegations of fictitious value and fraud by any tender of evidence or other proof. This was a final judgment on the issues thus raised, binding on the parties to the proceeding. It is not any the less so, as the Court of Appeals thought, because the moving parties failed to support their allegations by evidence.

In general a judgment is *res judicata* not only to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit. *Cromwell* v. *County of Sac*, *supra*, 352; *Grubb* v. *Public Utilities Comm'n*, *supra*, 479; *Chicot County Dist.* v. *Bank*, *supra*, 375. But here the alleged fraud was put in issue and the issue was decided against the trustee, the bankrupt and those whom they represent or who claim under them, for failure of proof. After two proceedings, in one of which the bankrupt and in the other of which the bankrupt and his trustee, sought, and were free, to prove that the judgment was based on fraudulently alleged, fictitious values, and in both of which the decision was against them, the principles of *res judicata* preclude the revival of the litigation in the bankruptcy court.

Pepper v. *Litton*, *supra*, lends no support to a different view. Undoubtedly, since the bankruptcy act authorizes a proof of claim based on a judgment, such a proof may be assailed in the bankruptcy court on the ground that the purported judgment is not a judgment because of want of jurisdiction of the court which rendered it over the persons of the parties or the subject matter of the suit, or because it was procured by fraud of a party. *Pepper* v. *Litton*, *supra*, 306; *Chandler* v. *Thompson*, 120 Fed. 940; *In re Continental Engine Co.*, 234 Fed. 58; *In re Stucky Trucking & Rigging Co.*, 243 Fed. 287; *In re Rubin*, 24 F. 2d 289. But it is quite another matter to say that the bankruptcy court may reexamine the issues determined by the judgment itself. It has, from an early date, been held to the contrary. *McKinsey* v. *Harding*, Fed. Cas. No. 8,866; *Ex parte O'Neil*, Fed. Cas. No. 10,527; *In re Ulfelder Co.*, 98 Fed. 409; *Peters* v. *United States*, 177 Fed. 885; *Handlan* v. *Walker*, 200 Fed. 566; *In re Ganet Realty Corp.*, 83 F. 2d 945; *Lyders* v. *Peterson*, 88 F. 2d 9. Nor can an attack be sustained on a judgment allegedly procured by fraudulent representations of the plaintiff, when the charge of

fraud has been rejected in previous litigations by the parties to the suit in which the judgment was rendered, or their representatives. *Pepper* v. *Litton, supra,* 306, n. 13; cf. *Mays* v. *Fritton,* 20 Wall. 414; *Jerome* v. *McCarter,* 94 U. S. 734, 737; *McHenry* v. *La Société Francaise,* 95 U. S. 58; *Davis* v. *Friedlander, supra*; *Winchester* v. *Heiskell,* 119 U. S. 450, 453; *Grant* v. *Buckner,* 172 U. S. 232, 238.

Neither *Pepper* v. *Litton, supra,* on which respondents chiefly rely, nor the other cases which they cite, sustain the contention that the bankruptcy court, in passing on the validity of creditors' claims, may disregard the principle of *res judicata.* In that case the judgment creditor sought by proof of claim on his judgment to share in the assets of the bankrupt estate, which were insufficient to satisfy the rival claim of another judgment creditor. We assumed, for purposes of decision, that the claim on which the disputed judgment was based was founded on a valid debt. But the court held that as the judgment creditor was also a controlling stockholder of the bankrupt corporation he was a fiduciary for the other creditors of the corporation and, as such, could not prove his claim in competition with other creditors or gain from the estate any personal advantage, security, or priority over them. After referring to certain cases in which creditors' claims had been disallowed and saying: "These cases do not turn on the existence or nonexistence of the debt. Rather they involve simply the question of order of payment," 308 U. S. 310, the Court concluded: "Where there is a violation of those principles, equity will undo the wrong or intervene to prevent its consummation. . . . On such a test the action of the District Court in disallowing or subordinating Litton's claim was clearly correct." 308 U. S. 311. Cf. *Taylor* v. *Standard Gas & Electric Co., supra.*

Although the trustee in bankruptcy in *Pepper* v. *Litton* had unsuccessfully attacked the judgment in another proceeding in the state courts, this Court pointed out that in that proceeding no question was presented "whether or not the . . . judgment might be subordinated to the claims of other creditors upon equitable principles," 308 U. S. 302-03, and that "the only decree which was asked or could be given in the plaintiff's favor under the pleadings was for cancellation of the judgment as a record obligation of the bankrupt." 308 U. S. 303. It was thus made plain that the theory relied upon as requiring disallowance or subordination of the contested claim rested upon grounds not

previously adjudicated, and we explicitly noted that the state court did not adjudicate it. 308 U. S. 302-03.*

Here when the petitioner brought his suit for conversion he was not a fiduciary for the defendant, Woodruff, or his creditors. There was no equitable ground upon which his claim or the judgment upon it could be set aside or subordinated to those of other creditors in the bankruptcy proceeding, except that asserted by

* In Pepper *v.* Litton, 308 U. S. 295, the Court found that Litton, a "dominant and controlling" stockholder of the bankrupt corporation entered into a "planned and fraudulent scheme" which was "plainly for the sole purpose of avoiding payment of the Pepper debt", which was then owed by the corporation. The fraudulent scheme, which was initiated shortly before the bankruptcy, involved several successive steps, as follows: Litton procured a judgment in his favor against the corporation, upon an alleged fictitious claim for salary, which was entered on confession in its behalf by one of its officers, who was also an employee of Litton and subservient to his will. A second judgment having been entered against the corporation upon the debt to Pepper, and, execution upon the Pepper judgment having been stayed pending an appeal by the corporation, Litton then became the purchaser of certain property of the corporation on execution sale under his judgment, and transferred the property to a newly organized corporation in exchange for all its stock. He then caused the judgment debtor to be adjudged a bankrupt on its voluntary petition and filed in the bankruptcy proceeding proof of claim upon the confessed judgment.

In the meantime Pepper had brought suit in the Virginia state courts to have the Litton judgment set aside as void. Following the sale of the corporation's property under the Litton execution, the sheriff instituted an interpleader suit joining Litton and Pepper as claimants to the proceeds of the execution sale in the sheriff's hands. Litton and Pepper both answered, asserting claims to the proceeds subject to an existing prior lien. Thereafter the trustee in bankruptcy, with the authority of the bankruptcy court, moved in the state court to set aside the Litton judgment and to quash the execution on the ground that the judgment was void, since the confession did not conform to the Virginia statutes. That court concluded that the Litton judgment was void, but denied the motion on the ground that the trustee was estopped to challenge it.

It held that Pepper, in asserting a claim to the proceeds of the sheriff's sale in the interpleader suit, had treated them as validly derived from the execution sale on the Litton judgment, and that in consequence he had elected to recognize the validity of the judgment. As at that time Litton had acquired or caused to be withdrawn from the bankruptcy proceedings all the claims against the estate, other than the Pepper judgment, the court held that the trustee was representing only Pepper in the state court suit and that the trustee, as well as Pepper, was estopped to maintain it. The judgment was affirmed on these grounds by the Virginia Supreme Court. Smith *v.* Litton, 167 Va. 263. On objections to the claim on the Litton judgment the district court, sitting in bankruptcy, disallowed the claim. On appeal the Circuit Court of Appeals reversed, holding that the decision and judgment of the state court in Smith *v.* Litton, *supra*, were *res judicata* in the bankruptcy proceeding. 100 F. 2d 830.

This Court, in reversing the judgment of the Court of Appeals, pointed out that the challenge to the validity of the Litton judgment in the state court was on the ground that the judgment was irregular or void on its face because the confession of judgment did not conform to the requirements of state law. We also pointed out that under the pleadings and practice in the suit attacking the judgment the validity of the alleged debt for salary was not in issue and no question was in issue or presented whether the Litton judgment might, on equitable principles, be subordinated to the claims of other creditors. We said, page 303: "The only decree which was asked or

respondents that the judgment had been procured by a fraud perpetrated on the judgment debtor. That issue, having been twice litigated and decided in the court in which the judgment was rendered, in proceedings brought by the trustee in bankruptcy and the bankrupt, and by the bankrupt alone, may not now be relitigated in the bankruptcy court.

Reversed.

Mr. Justice BLACK and Mr. Justice DOUGLAS dissenting.

We would affirm the judgment for the reasons stated by Judge Bratton writing for the Circuit Court of Appeals. 150 F. 2d 869.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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could be given in the plaintiff's favor under the pleadings was for cancellation of the judgment as a record obligation of the bankrupt. It is therefore plain that the issue which the bankruptcy court later considered was not an issue in the trial of the cause in the state court and could not be adjudicated there."

Thus the Court recognized that the judgment of the state court in Smith v. Litton, *supra*, was not *res judicata* as to matters later ruled upon by the bankruptcy court and by this Court. Upon this assumption, and assuming also the validity of the alleged salary debt underlying the Litton judgment, this Court held, on equitable principles, that Litton was not free to assert his judgment in competition with other creditors because he had acquired the judgment in breach of the fiduciary obligation which a controlling stockholder of the bankrupt owes to the other creditors, not to secure for himself a personal advantage by way of security or priority over them. Cf. Taylor v. Standard Gas & Electric Co., 306 U. S. 307.

The decision in Pepper v. Litton thus affords no support for petitioner's contention that the doctrine of *res judicata* is inapplicable in a bankruptcy proceeding. Cases on which respondents rely, cited in Pepper v. Litton, as illustrating the extent to which a court may look behind a judgment proved in bankruptcy to ascertain the nature of a claim upon which the judgment is based, are concerned exclusively with the question of the nature of the liability represented by the judgment, that is, whether it represents a "debt" provable and dischargeable in bankruptcy under §§ 17 and 63 of the Bankruptcy Act. Thus a decree for alimony was held to be not a "debt" but in the nature of a penalty for failure to perform a duty, and not provable or dischargeable in bankruptcy. Wetmore v. Markoe, 196 U. S. 68. Those cases do not support the ruling of the Court of Appeals below that the bankruptcy court, in determining the validity of a provable claim upon a judgment, may reexamine the issues which were litigated by the bankrupt or his trustee in the suit in which the judgment was rendered or in any other. See Boynton v. Ball, 121 U. S. 457.

SUPREME COURT OF THE UNITED STATES.

No. 496.—October Term, 1945.

M. E. Heiser, Petitioner,
vs.
Willie Mae Woodruff, Howard L. Woodruff, Marguerite B. Woodruff, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 22, 1946.]

Mr. Justice Rutledge.

I concur in the result. In my judgment it is necessary, in this case, to do no more than to rule that equitable principles, applicable in bankruptcy in accordance with *Pepper* v. *Litton*, 308 U. S. 295, and prior decisions, do not require reexamination by the bankruptcy court, in the circumstances now presented, of the foundations of the judgment which is the basis of the claim in issue. If, as the Court declared in *Pepper* v. *Litton*, the bankruptcy court has power to reject claims, even when previously allowed, "in whole or in part 'according to the equities of the case,' " 308 U. S. at 304,[1] see 11 U. S. C. § 93(k), I find no reason for qualifying that rule in this case. It necessarily comprehends that the bankruptcy court in the allowance or rejection and ordering of claims

[1] "Allowance and disallowance are judicial acts. . . . In passing on an allowance of claims the court sits as a court of equity, which gives it far-reaching powers 'to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate.' [Pepper v. Litton, 308 U. S. 295, 308.] Mere reasons of equity may sometimes require that a creditor's claim be either totally disallowed, or subordinated to the claims of all or of certain other general creditors. . . . Equities to be weighed in connection with the allowance of a claim may vary in importance. They may in extreme cases be strong enough to warrant disallowance absolutely and entirely. In other cases equity may be satisfied with a mere 'subordination' or postponement of a claim, and its relegation to a rank inferior to that of all general creditors or of a particular group." 3 Collier, Bankruptcy (14th ed.) 185-186. See also 3 *id.* at 1800-1801.

11 U. S. C. § 93(a) provides: "A proof of claim shall consist of a statement under oath, in writing and signed by a creditor, setting forth the claim; the consideration therefor; whether any and, if so, what payments have been made thereon; and that the claim is *justly owing* from the bankrupt to the creditor." (Emphasis added.)

shall not be bound by any broad or rigid rule of *res judicata*. That, I think, is the essential ruling of the *Pepper* case.[2]

On the other hand, prior adjudication of the very grounds alleged for disallowing or subordinating a judgment claim, cannot be irrelevant to what equitable principles may require the bankruptcy court to do in disposing of the claim. And the same may be true also of prior failure to secure such an adjudication when adequate opportunity is afforded by proceedings instituted to set aside or modify the judgment. Cf. *Handlan* v. *Walker*, 200 Fed. 566. Sound policies of judicial administration, affecting both the bankruptcy court and the court rendering the judgment, may have a similar bearing.

In this case the two separate proceedings had in the District Court for the Southern District of California afforded perhaps more than adequate opportunity for adjudication of the issues now raised in the bankruptcy court, once to the bankrupt, once to his trustee. These proceedings were allowed to be terminated adversely in the one case without appeal, in the other after adverse decision on appeal and without application for certiorari. *Jackson* v. *Heiser*, 111 F. 2d 310. I do not think equity requires a third opportunity to be afforded by the bankruptcy court. On this ground I agree that the judgment should be reversed.

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2 The case has been so read. Citing it, 3 Collier, Bankruptcy (14th ed.) 1800, says: "The doctrine of *res judicata*, as applied to the bankruptcy court in deciding whether a claim should be allowed, disallowed or subordinated, is subject to the paramount equitable powers of bankruptcy courts to prevent the perpetration of fraud and collusion."